

Exhibit “F”

JUN 22 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	
RODNEY M. LAFOLLETTE, ET AL.	Docket: 7310.C
Serial No.: 09/930,539	Art Unit: 1745
Filed: August 14, 2001	Examiner: Raymond Alejandro
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Patrick Ryan
Director - Group 1740
Commissioner for Patents
P.O. Box 1450
Arlington, VA 22313-1450

Sir:

This is in response to the erroneous Notification of Non-Compliant Appeal Brief (Notification), copy appended as Attachment C and invokes the authority of the Director of Patent Examining Group 1740.

The Notification, while citing to 37 CFR § 1.191(a) and MPEP 1205, draws clearly erroneous conclusions, i.e.:

1. The appealed claims having identical substance must be twice rejected and, therefore, if a claim is amended after a second rejection, an appeal as to that claim is not timely.
2. That certain claims have not been entered prior to the Notice of Appeal when they have or should have been entered.
3. The Appeal Brief unfairly appeals subject matter never examined.
4. That the Applicant must cancel limitation or language added by amendment and thereby return the appealed claims to their state prior to the amendment or withdraw the appeal.

The Group 1740 Director is respectfully requested to correct the errors of the Examiner, pointed out above, and to take certain additional action identified below.

First, the Director is requested to cause any non-entered amendments to be entered. Second, if there are further procedural requirements for such entry, the undersigned should be immediately notified.

Third, the Director is requested to bring this case of Ex parte Lemoine, 46 USPQ 2d 1420 (Bd of Pat App and Interf. 1998) to the attention of the Examiner. A copy of this case is attached as Attachment B. Lemoine unequivocally rejects the erroneous appealability positions of the Examiner, holding that it is not the exact limitations of appealed claims nor whether the claims have been rejected in the case placed on appeal that determine appealability.

The Board in Lemoine, at 1422-1423, specifically held:

Section 134 of Title 35 gives applicants the statutory right to an administrative appeal. The section provides:

An applicant for a patent, any of whose claims have been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences

Jurisdiction for this appeal depends on whether appellant is an applicant "any of whose claims has been twice rejected." We conclude that appellant had the right to appeal the rejections and we have jurisdiction.

To reach a decision requires us to construe the word "claims" as used in § 34 [sic, § 134]. The word is susceptible to at least two interpretations. It can refer to the claims of an application, *i.e.*, the "one or more claims particularly pointing out and distinctly claiming the subject matter" of the invention required by 35 U.S.C. § 112, ¶ 2. Or the word can be used in a more general sense to refer to claims "for a patent" as it is used in 35 U.S.C. § 132. In this latter sense, the word is synonymous with a request or demand for a patent.

* * * *

. . . we conclude that the "claims" as used in § 134 is a reference to the repeated "claim for a patent" as used in § 132 rather than a reference to a particular claim "of an application." Under our interpretation, *so long as the applicant has twice been denied a patent, an appeal may be filed*. So construing the statute,

we conclude that applicant's claims for a patent have been twice rejected. Applicant has been denied a patent three times. Applicant, therefore, had the right to appeal and we, accordingly, have jurisdiction. (Emphasis added).

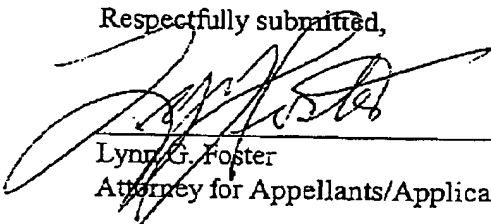
We must now determine whether the Applicants here have been "twice . . . denied a patent," independent of the number of patent applications. To this end, reference is made to appended Attachment A, where, in respect to this application, it can be seen that the Applicants have been "denied a patent," four times, i.e., three times in parent SN 09/037,801, and once in this application.

It follows that the Examiner's contentions in the Notification are clearly in error and that this application is correctly on appeal and the jurisdiction of the Board has been properly invoked.

The Director is courteously requested to reverse the position of the Examiner, enter any unentered amendments, recognize that the jurisdiction of the Board has been timely and properly invoked and instruct the Examiner to file an Answer in the pending Appeal of this Application. The Appeal is proper under Lemoine.

Thank you for your assistance.

Respectfully submitted,



Lynn G. Foster
Attorney for Appellants/Applicants

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Salt Lake City, Utah 84102
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ATTACHMENT A

A. Docket 7310 SN 09/037,801 filed 03/10/98

1. Claims of which were first rejected under § 103(a) on 11/24/99 on Hockaday 5,759,712 in view of Hockaday 5,631,099
2. Claims of which were rejected a second time under § 103(a) on 05/17/00 on Arledge 5,437,941. Made final without applicants receiving an opportunity to address Arledge.
3. CPA filed, claims of which were rejected for the third time under § 103(a) on 02/20/01 again on Arledge.
4. Some claims required a tiny micro battery area, e.g., footprint substantially less than 20 cm² and an area congruent for size integration with a MEMS microcircuit.

B. Docket 7310.C SN 09/930,539 filed 08/14/01

1. Thrice rejected claims from parent SN 09/037,801 were placed in this continuing application
2. Some claims required a tiny micro battery area, e.g., footprint substantially less than 20 cm² and an area congruent with size integration with a MEMS microcircuit.
3. Petition to Make Special granted
4. The claims of which, after three years of pendency, were rejected a fourth time on 08/05/04 on Bates 5,455,126 under § 102(b) and on Bates and Miekka under § 103(a).
5. Notice of Appeal mailed 11/19/04. Appeal Brief and Appendix mailed 12/02/04.

C. Docket 7310.D1 SN 09/627,959 filed 07/28/00

1. The claims of which were moved forward from SN 09/037,801 to this continuing application and a fifth rejection was made on 05/23/02 under § 103(b) on Bates 5,455,126.
2. All claims except one were rejected a second time on Bates.
3. The one claim became U.S. 6,610,440 and reads:
 1. A microfabricated battery comprising a pair of microscopic electrodes, a microscopic amount of electrolyte disposed in a microscopic site between the electrodes, the microfabricated battery comprising *an area as small as one square micron*.
4. The matter of claiming a tiny area, in this case as small as one square micron, has been in front of Examiner Alejandro continuously since 1998.

D. Docket 7310.D2 SN 10/317,539 filed 12/10/02

1. Claims moved forward from grandparent SN 09/037,081 to parent SN 09/627,959 to this continuing application.
2. Claims rejected for the sixth time on 08/05/04 under § 102(b) on Bates, some claims being limited to both a MEMS-sized microcircuit and a tiny micro-battery baring an area less than the area of the MEMS.

E. Docket 7310.D1C SN 10/350,474 Filed 01/24/03

1. Claims moved forward from grandparent SN 09/037,801 to parent SN 09/627,959 to this continuing application.
2. The claims, rejected multiple times in prior cases, were appealed, the Notice of

- Appeal being on 04/28/03. The Appeal Brief and Appendix were mailed 06/13/03.
3. The Examiner failed to deal with the Appeal, ignored it and issued a restriction about a year later, on 06/04/04.
 4. While the initial appeal was pending and without an Examiner's Answer on any other formal communication, the elected claims were rejected under §102(b) and §103(a) on Bates 5,455,126, as were the claims of parent SN 09/627,959, in an Office Action mailed 08/05/04.
 5. Thereafter, a second Notice of Appeal was filed 12/06/04 and the Appeal Brief and Appendix were mailed 12/10/04.

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ATTACHMENT B

ATTACHMENT C



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1480
Alexandria, Virginia 22313-1480
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,539	08/14/2001	Rodney M. LaFoliate	7310.C	7186

7590 02/16/2005

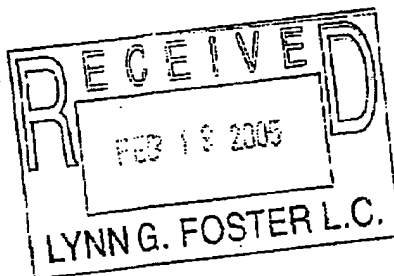
Foster & Foster, LLC
Mr. Lynn G. Foster
600 E. 300 S.
Salt Lake City, UT 84102

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/930,539	Applicant(s) LAFOLLETTE ET AL.	
	Examiner Raymond Alejandro	Art Unit 1745	

-The MAILING DATE of this communication appears on the cover sheet with the correspondence address-

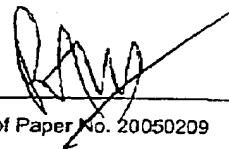
The Appeal Brief filed on 06 December 2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see next page.

Raymond Alejandro
Examiner
Art Unit: 1745



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Application/Control Number: 09/930,539
Art Unit: 1745

JUN 22 2006

Page 2

DETAILED ACTION

This Notification of Non-Complaint Appeal Brief is being provided in response to the Appeal Brief filed on 12/06/04.

In this regard, it is noted that under 37 CFR 1.191(a), an applicant for a patent dissatisfied with the primary examiner's decision in the second or final rejection of his or her claims may appeal to the Board for review of the examiner's rejection by filing a notice of appeal and the required fee set forth in 37 CFR 1.17(b) within the timeperiod provided under 37 CFR 1.134 and 1.136. A notice of appeal may be filed after any of the claims has been twice rejected, regardless of whether the claim(s) has/have been finally rejected. The limitation of "twice or finally...rejected" does not have to be related to a particular application. For example, if any claim was rejected in a parent application, and the claim is again rejected in a continuing application, then applicant will be entitled to file an appeal in the continuing application, even if the claim was rejected only once in the continuing application (*See MPEP 1205 Notice of Appeal*).

In this instance, the present appeal brief fails to meet the requirement of having the claims twice rejected simply because the appealed claims and their intended subject matter have never been rejected by the examiner. That is to say, the intended amendment of 10/14/04, the substitute amendment of 11/01/04, and the supplemental amendment of 11/09/04 incorporating new limitations into the claims (*i.e. the specific foot print area as low as 0.001 cm² in claim 21; and the specific footprint within a range of less than 1 cm² to 0.0001 cm² and the connotation of the micro-fabricated limitation in claim 33*) were never made of record and officially entered due to its non-compliant condition as set forth in various Notices of Non-Compliant Amendment

Application/Control Number: 09/930,539
Art Unit: 1745

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dated 10/22/04 and 11/15/04 identifying the lack of a complete listing of all of the claims, and/or in the Failure to Acceptably Respond to Notice of Non-Compliant Amendment of 11/23/04. The foregoing non-compliant communications were issued by the Technical Support Team of PTO, and they do not reflect, in any way, an official examination on the merits of claims. Thus, since the appealed claims include non-entered amendments and unexamined subject matter, it is contended that the appealed claims have not been considered and examined on their merits. Additionally, the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.

In consequence, the appeal brief is defective as it unfairly appeals subject matter never entered and made of record by PTO; and ultimately, never considered and examined on the merits by the examiner. To remedy this defectiveness, applicant is suggested to either: a) cancel or delete the intended new limitations (the limitations newly added in the amendment not-entered) so as to fairly appeal the examiner's rejection based on the original claimed subject matter of the current application; or b) withdraw the appeal brief and allow the application continues its regular course of action and examination. If applicant desires to adopt any of aforementioned suggestions or any other action, applicant is still reminded of his obligation to submit a proper reply addressing this issue so as to avoid an abandonment due to applicant's failure to offer a proper reply timely filed.



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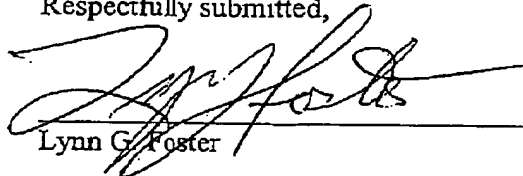
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In re Patent Application of:	
RODNEY M. LAFOLLETTE, ET AL.	Docket: 7310.C
Serial No.: 09/930,539	Art Unit: 1745
Filed: August 14, 2001	Examiner: Raymond Alejandro
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	

CERTIFICATION OF FILING BY FACSIMILE TRANSMISSION

I hereby certify that the attached Response to Notification of Non-Compliant Appeal Brief was transmitted by facsimile to Patrick Ryan, Director - Group 1740, U.S. Patent and Trademark Office at (703) 872-9306, on 11 March, 2005.

Respectfully submitted,


Lynn G. Foster

602 East 300 South
Salt Lake City, Utah 84102
Telephone: (801) 364-5633

Exhibit "G"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	
RODNEY M. LAFOLLETTE, ET AL.	Docket: 7310.C
Serial No.: 09/930,539	Art Unit: 1745
Filed: August 14, 2001	Director: Patrick Ryan
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	Examiner: RAYMOND ALEJANDRO

APPLICANTS' SUMMARY OF INTERVIEW

Patrick Ryan
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appreciation is extended to Examining Director Patrick Ryan and Examiner Raymond Alejandro for the time granted for an interview on July 11, 2005 on three patent applications, each of which is on appeal.

The three applications forming the subject matter of the interview are:

1. Serial No. 09/930,539, filed August 14, 2001 (Docket 7310.C);
2. Serial No. 10/350,474, filed January 24, 2003 (Docket 7310.D1C); and
3. Serial No. 10/317,539, filed December 10, 2002 (Docket 7310.D2).

One appeal is pending in Serial No. 09/930,539, one is pending in Serial No. 10/317,539, and two appeals are pending in Serial No. 10/350,474.

The history of related patent applications was emphasized by the Applicants, particularly in reference to Attachment "A" to the Response to Notification of Non-Compliant Appeal Brief in Serial No. 10/350,474. A copy of Attachment "A" is included herewith.

When it became clear to Director Ryan, for the first time, that parent application Serial No. 09/037,801 and a CPA thereof had been rejected three times, among other rejections in other applications, Director Ryan apologized, indicated he had earlier misunderstood the situation and took personal responsibility for the failure to deal with the four appeals in question.

During the interview, Applicants pointed out that in Serial No. 10/317,539 an appeal was mailed December 15, 2004 and an Appeal Brief mailed December 16, 2004. No Examiner's Answer has been filed between December 16, 2004 and the July 11, 2005 interview nor has any other communication been dispatched by the Examiner. Director Ryan indicated he would review promptly the 10/317,539 file and, if appropriate, would have the Examiner prepare, serve and file his Answer.

As to Serial No. 10/350,474, Applicants made clear in the interview that two appeals are pending. Claims from grandparent Serial No. 09/037,081 were moved to parent Serial No. 09/627,959 and thence to Serial No. 10/350,474, where after over six years of pendency, a first appeal was filed on April 28, 2003 as to all of the claims previously rejected and moved forward to Serial No. 10/350,474. The Examiner, in over two years, has yet to file his Answer.

Instead, in Serial No. 10/350,474, the Examiner issued a restriction of claims previously examined as a single invention in Serial No. 09/627,959. This violated the results of a Petition which set to one side, the Examiner's twenty-three way restriction in Serial No. 09/037,081, which, by "agreement" with the Examiner and his supervisor, limited the restriction to a five-way restriction.

Thereafter, the Examiner once more rejected the improperly restricted and elected claims of Serial No. 10/350,474. The claims were somewhat amended and a second Notice of Appeal was filed. The Examiner has refused to file an Answer to the second appeal, the Examiner erroneously

contending that no appeal can be taken from claims having amendments therein no matter how many times they have been rejected.

The Examiner erroneously protested that a small footprint or area limitation had not been searched, when, in fact, the Examiner allowed U.S. Patent 6,610,440 (Serial No. 09/627,959), which contains the following claim:

1. A microfabricated battery comprising a pair of microscopic electrodes, a microscopic amount of electrolyte disposed in a microscopic site between the electrodes, the microfabricated battery *comprising an area as small as one square micron.*

Clearly, the Examiner has searched a small footprint or area and found that feature to be new, useful and non-obvious in the context of a microfabricated battery.

While the Examiner protested, exhibiting apparent bias, that he needed to do a further search to find small footprint prior art, the Applicants urged that the two appeals were both timely and proper and Examiner's Answers were long overdue in Serial No. 10/350,474.

In Serial No. 09/930,539, as is evident from Attachment "A," thrice rejected claims from parent Serial No. 09/037,081 were placed in Serial No. 09/930,539 and, after three years, once more rejected. The Notice of Appeal was timely filed on November 19, 2004 and the Brief on December 2, 2004. No Examiner's Answer has been filed, the Examiner insisting that a fifth rejection is required before an appeal is timely.

The Applicants urged the Director to cause Examiner's Answers to be filed as soon as possible to all four appeals in the three above-identified applications, based on *Ex parte Lemoine*, 46 USPQ 2d 1420 (Bd. of Pat. App. and Interf. 1998), which held:

Section 134 of Title 35 gives applicants the statutory right to an administrative appeal. The section provides:

An applicant for a patent, any of whose claims have been twice rejected, may appeal from the decision of

the primary examiner to the Board of Patent Appeals
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Jurisdiction for this appeal depends on whether appellant is an
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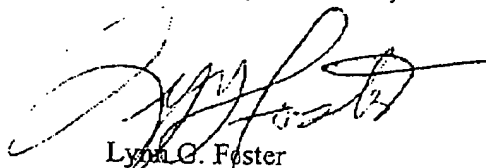
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than a reference to a particular claim "of an application." Under our
interpretation, *so long as the applicant has twice been denied a
patent, an appeal may be filed.* So construing the statute, we
conclude that applicant's claims for a patent have been twice rejected.
Applicant has been denied a patent three times. Applicant, therefore
had the right to appeal and we, accordingly, have jurisdiction.
(Emphasis added).

The Director indicated he would confer with the editor of the MPEP and report quickly to
the undersigned.

Respectfully submitted,



Lynn G. Foster
Attorney for Applicants

602 East 300 South
Salt Lake City, Utah 84102
Telephone: (801) 364-5633

ATTACHMENT A

A. Docket 7310 SN 09/037,801 filed 03/10/98

1. Claims of which were first rejected under § 103(a) on 11/24/99 on Hockaday 5,759,712 in view of Hockaday 5,631,099
2. Claims of which were rejected a second time under § 103(a) on 05/17/00 on Arledge 5,437,941. Made final without applicants receiving an opportunity to address Arledge.
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4. While the initial appeal was pending and without an Examiner's Answer on any other formal communication, the elected claims were rejected under §102(b) and §103(a) on Bates 5,455,126, as were the claims of parent SN 09/627,959, in an Office Action mailed 08/05/04.
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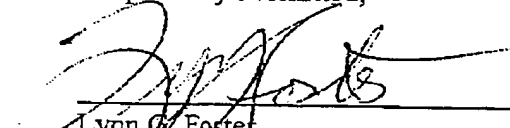
CERTIFICATION OF FILING BY FACSIMILE TRANSMISSION

Patrick Ryan
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify the attached APPLICANTS' SUMMARY OF INTERVIEW was transmitted by facsimile to the above-identified Examiner at (571) 273-8300 on the date indicated below.

Respectfully submitted,


Lynn G. Foster
Attorney for Applicant

August 3, 2005

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Salt Lake City, UT 84102
Telephone: (801) 364-5633

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A LIMITED LIABILITY COMPANY

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TRADE SECRETS
UNFAIR COMPETITION
RELATED LITIGATION

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FACSIMILE: (801) 355-8938
E-MAIL: foster@fosterpatlaw.com

LYNN G. FOSTER

REG. PROF. ENGINEER
ATTORNEY AT LAW
PATENT ATTORNEY

FACSIMILE COVER PAGE

DATE: August 3, 2005
TO: Patrick Ryan
FAX NUMBER: (571) 273-8300
RE: Serial No. 09/930,539
Docket: 7310.C

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 10

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Exhibit “H”



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Mailed: 11/17/05
In re application of
LaFollette et al.
Serial No. 09/930,539
Filed: August 14, 2001
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS

DECISION ON
PETITION

This is a response to applicant's response to notification of non-compliant appeal brief. Applicant requests that the authority of the Director of Technology 1700 be invoked. Applicant's request is being considered a PETITION UNDER RULE 37 C.F.R. 1.181(a). The petition requests that the unentered amendments be entered and to recognize that the application is correctly on appeal and the jurisdiction of the Board has been properly invoked.

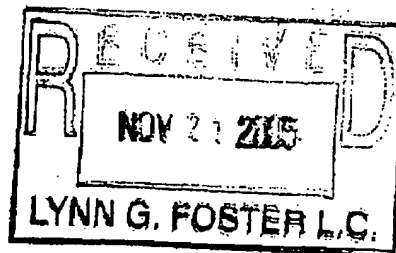
DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee). The office issued a notice of defective appeal brief on February 16, 2005. Applicant asserts that the claims have been rejected four times and are proper for appeal. Applicant further asserts that the claims were rejected three times in application 09/037,801. The current application (09/930,539) is a continuation of application 09/037,801.

A review of the current application shows the following. A non-final rejection was mailed out on August 5, 2004. Applicant filed a response on October 14, 2004 to the non-final office action. The Office mailed applicant on October 22, 2004 a notice of informal or non-responsive amendment. Applicant attempted to remedy the situation on November 1, 2004 and November 9, 2004. A notice of non-compliant relating to both of these attempts was mailed on November 23, 2004.

Applicant filed a Notice of Appeal on November 26, 2004 and an Appeal Brief on December 6, 2004. Applicant filed an amendment rectifying the issues raised by the non-compliant notice on November 12, 2004 and was received by the office on November 15, 2004. It appears that a notice of non-compliant amendment mailed in November did not address the amendment received by the Office November 15, 2004. Applicant's appeal brief appears to be based upon the amendment received by the Office on November 15, 2004.

In view of the current application being a continuation, the claims have been rejected more than two times and are proper for appeal.

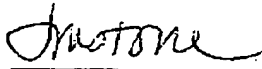


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The Petition is GRANTED.

The application is being forwarded to the Examiner for consideration of applicants amendment received November 15, 2004 and if the amendment is in compliance to then consider applicants appeal brief and to file an Examiner's answer in response to applicant's appeal brief.



Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Lynn G. Foster
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Salt Lake City, Utah 84102

Exhibit “I”



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/930,539

08/14/2001

Rodney M. LaFollette

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04/17/2006

Foster & Foster, LLC
Mr. Lynn G. Foster
600 E. 300 S.
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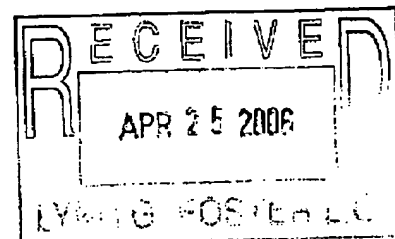
EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



BEST AVAILABLE COPY

Communication Re: Appeal

Application No.	Applicant(s)	
09/930,539	LAFOLLETTE ET AL.	
Examiner	Art Unit	
Raymond Alejandro	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 06 December 2004 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☒ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.


The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.


PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER

Part of Paper No. 20060404

U.S. Patent and Trademark Office

Communication Re: Appeal

p.33

801 355-8938

Lynn G. Foster

Jun 22 06 01:04p

Application/Control Number: 09/930,539
Art Unit: 1745

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DETAILED ACTION

This Notification of Defective Appeal Brief is being provided in response to the Appeal Brief filed on 12/06/04.

In this regard, it is noted that under 37 CFR 1.191(a), an applicant for a patent dissatisfied with the primary examiner's decision in the second or final rejection of his or her claims may appeal to the Board for review of the examiner's rejection by filing a notice of appeal and the required fee set forth in 37 CFR 1.17(b) within the time period provided under 37 CFR 1.134 and 1.136. A notice of appeal may be filed after any of the claims has been twice rejected, regardless of whether the claim(s) has/have been finally rejected. The limitation of "twice or finally...rejected" does not have to be related to a particular application. For example, if any claim was rejected in a parent application, and the claim is again rejected in a continuing application, then applicant will be entitled to file an appeal in the continuing application, even if the claim was rejected only once in the continuing application (*See MPEP 1205 Notice of Appeal*).

In this instance, the present appeal brief fails to meet the requirement of having the claims twice rejected simply because the appealed claims and their intended subject matter have not been twice rejected by the examiner. That is to say, the intended amendment of 10/14/04, the substitute amendment of 11/01/04, and the supplemental amendment of 11/09/04 incorporating new limitations into the claims (*i.e. the specific foot print area as low as 0.001 cm² in claim 21; and the specific footprint within a range of less than 1 cm² to 0.0001 cm² and the connotation of the micro-fabricated limitation in claim 33*) were never made of record and officially entered due to its non-compliant condition as set forth in various Notices of Non-Compliant Amendment

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Art Unit: 1745

dated 10/22/04 and 11/15/04 identifying the lack of a complete listing of all of the claims, and/or in the Failure to Acceptably Respond to Notice of Non-Compliant Amendment of 11/23/04. The foregoing non-compliant communications were issued by the Technical Support Team of PTO, and they do not reflect, in any way, an official examination on the merits of claims. Thus, since the appealed claims include non-entered amendments and unexamined subject matter, it is contended that the appealed claims have not been considered and examined on their merits. Additionally, the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected. That is to say, the appeal brief is premature because the present claims on appeal have not been twice rejected in their entirety. In other words, the present claims contain newly added subject matter that has not been addressed or considered by the examiner.

In consequence, the appeal brief is defective as it unfairly appeals subject matter not twice rejected or considered by the examiner; and ultimately, never considered and examined on the merits by the examiner. To remedy this defectiveness, applicant is suggested to either: a) cancel or delete the newly added limitations (the limitations newly added in the amendment not-entered) so as to fairly appeal the examiner's rejection based on the original claimed subject matter of the current application; or b) withdraw the appeal brief and allow the application to continue its regular course of action and examination. If applicant desires to adopt any of aforementioned suggestions or any other action, applicant is still reminded of his obligation to submit a proper reply addressing this issue so as to avoid an abandonment due to applicant's failure to offer a proper reply timely filed.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

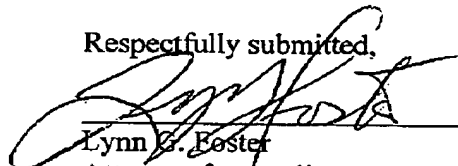
In re Patent Application of:			
	RODNEY M. LAFOLLETTE, ET AL.	Docket:	7310.C
Serial No.:	09/930,539	Art Unit:	1745
Filed:	August 14, 2001	Director:	Patrick Ryan
For:	MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	Examiner:	RAYMOND ALEJANDRO

CERTIFICATION OF FILING BY FACSIMILE TRANSMISSION

MAIL STOP - PETITIONS
JACQUELINE STONE, DIRECTOR
TECHNOLOGY CENTER 1700
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify the attached Renewal Petition and Brief in Support thereof were transmitted by facsimile to (571) 273-8300 on the date indicated below.

Respectfully submitted,


Lynn G. Foster
Attorney for Applicants

June 22, 2006

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